

**COPY****SECRETARY OF STATE**

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 10 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 25 2002

*Bill Jones*

Secretary of State

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# Delaware

*The First State*

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ENDORSED - FILED  
In the office of the Secretary of State  
of the State of California

JAN 08 2002

BILL JONES, Secretary of State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"INSONUS MEDICAL, INC.", A CALIFORNIA CORPORATION,  
WITH AND INTO "INSOUND MEDICAL, INC." UNDER THE NAME OF  
"INSOUND MEDICAL, INC.", A CORPORATION ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED  
IN THIS OFFICE THE EIGHTH DAY OF JANUARY, A.D. 2002, AT 9  
O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
KENT COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1547616

DATE: 01-08-02

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AGREEMENT AND PLAN OF MERGER  
OF  
INSOUND MEDICAL, INC.  
(a Delaware corporation)  
AND  
INSONUS MEDICAL, INC.  
(a California corporation)

THIS AGREEMENT AND PLAN OF MERGER, dated as of January 8, 2002 (this "Agreement") is between InSound Medical, Inc., a Delaware corporation ("InSound"), and InSonus Medical, Inc., a California corporation ("InSonus"). InSound and InSonus are sometimes referred to herein as the "Constituent Corporations."

RECITALS:

A. InSound is a corporation duly organized and existing under the laws of the State of Delaware and has a total authorized capital stock of 35,087,676 shares. The number of shares of Preferred Stock authorized to be issued is 5,087,676, par value \$.0001, of which 400,840 shares have been designated as Series A Preferred Stock, 2,499,336 shares have been designated as Series B Preferred Stock and 2,187,500 shares have been designated as Series C Preferred Stock. No shares of Preferred Stock were outstanding as of the date hereof and prior to giving effect to the transactions contemplated hereby. The number of shares of Common Stock authorized to be issued is 30,000,000, par value \$.0001. As of the date hereof, and before giving effect to the transactions contemplated hereby, 100 shares of Common Stock were issued and outstanding, all of which were held by InSonus.

B. InSonus is a corporation duly organized and existing under the laws of the State of California and has an authorized capital stock of 35,087,676 shares. The number of shares of Preferred Stock authorized to be issued is 5,087,676, no par value, of which 400,840 shares have been designated as Series A Preferred Stock, 2,499,336 shares have been designated as Series B Preferred Stock and 2,187,500 shares have been designated as Series C Preferred Stock. Of these designated shares of Preferred Stock, 400,840 shares of Series A Preferred Stock, 2,499,336 shares of Series B Preferred Stock and 2,187,500 shares of Series C Preferred Stock are presently outstanding. The number of shares of Common Stock authorized to be issued is 30,000,000, no par value, of which 3,592,944 are presently outstanding.

C. The Board of Directors of InSonus has determined that, for the purpose of effecting the reincorporation of InSonus in the State of Delaware, it is advisable and in the best interests of InSonus that InSonus merge with and into InSound upon the terms and conditions herein provided.

D. The respective Boards of Directors of InSound and InSonus have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective stockholders and executed by the undersigned officers.

E. InSound is a wholly-owned subsidiary of InSonus.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, InSound and InSonus hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

## I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the General Corporation Law of the State of California, InSonus shall be merged with and into InSound (the "Merger"), the separate existence of InSonus shall cease and InSound shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be InSound Medical, Inc., a Delaware corporation.

1.2 Filing and Effectiveness. The Merger shall not become effective until the following actions shall be completed:

(a) This Agreement and the Merger shall have been adopted and approved by the stockholders of InSonus and the sole stockholder of InSound in accordance with the requirements of the Delaware General Corporation Law and the General Corporation Law of the State of California;

(b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;

(c) An executed Certificate of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and

(d) An executed counterpart of this Agreement, a Certificate of Merger or any other document filed with the Secretary of State of the State of Delaware pursuant to section (c) above, shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective as aforesaid, is herein called the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of InSonus shall cease and InSound, as the Surviving Corporation (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and InSonus's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of InSonus in the manner more fully set forth in Section 259 of the General Corporation Law of the State of Delaware, (iv) shall continue to be subject to all of the debts, liabilities and obligations of InSound as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of InSonus in the same manner as if InSound had itself incurred them, all as

more fully provided under the applicable provisions of the General Corporation Law of the State of Delaware and the General Corporation Law of the State of California.

## II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of InSound as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of InSound as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of InSound immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## III. MANNER OF CONVERSION OF STOCK

3.1 InSonus Common Shares and Preferred Shares. Upon the Effective Date of the Merger, (a) each share of InSonus Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, par value \$.0001 per share, of the Surviving Corporation, (b) each share of InSonus Series A Preferred Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Series A Preferred Stock of the Surviving Corporation, (c) each share of InSonus Series B Preferred Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Series B Preferred Stock of the Surviving Corporation and (d) each share of InSonus Series C Preferred Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Series C Preferred Stock of the Surviving Corporation.

3.2 InSonus Options and Stock Purchase Rights. Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue the stock option plans (including the 2000 Stock Option Plan) and all other employee benefit plans of InSonus. Each outstanding and unexercised option, warrant or other right to purchase InSonus Common Stock shall become an option, warrant or right to purchase the Surviving Corporation's Common Stock on the basis of one (1) share of the Surviving Corporation's Common Stock for each share of InSonus

Common Stock issuable pursuant to any such option, warrant or stock purchase right on the same terms and conditions and at an exercise price per share equal to the exercise price per share applicable to any such InSonus option, warrant or stock purchase right at the Effective Date of the Merger. There are no options or purchase rights for Preferred Stock of InSonus.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options and stock purchase rights equal to the number of shares of InSonus Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.3 InSound Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, par value \$.0001 per share, of InSound issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by InSound, the holder of such shares or any other person, be canceled and returned to the status of authorized but unissued shares.

3.4 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of InSonus Common Stock and InSonus Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to such holders prior to any requested exchange (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or applicable class of Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of InSonus Common Stock or InSonus Preferred Stock, as the case may be, shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which shares of InSonus Common Stock and InSonus Preferred Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock and Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock and Preferred Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of InSonus so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of InSound stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable

securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of InSound that such tax has been paid or is not payable.

#### IV. GENERAL

4.1 Covenants of InSound. InSound covenants and agrees that it will, on or before the Effective Date of the Merger:

4.1.1 Qualify to do business as a foreign corporation in the State of California.

4.1.2 File any and all documents with the California Franchise Tax Board necessary for the assumption by InSound of all of the franchise tax liabilities of InSonus.

4.1.3 Take such other actions as may be required by the General Corporation Law of the State of California.

4.2 Further Assurances. From time to time, as and when required by InSound or by its successors or assigns, there shall be executed and delivered on behalf of InSonus such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by InSound the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of InSonus and otherwise to carry out the purposes of this Agreement, and the officers and directors of InSound are fully authorized in the name and on behalf of InSonus or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either InSonus or of InSound, or of both, notwithstanding the approval of this Agreement by the shareholders of InSonus.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholder or shareholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock or any Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 9 East Loockerman Street, Dover, Delaware 19901. The name of its registered agent at such address is National Registered Agents, Inc.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 37500 Central Court, Newark, California 94560, and copies thereof will be furnished to any stockholder or shareholder of either Constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the General Corporation Law of the State of California.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]



IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Boards of Directors of InSound Medical, Inc., a Delaware corporation, and InSonus Medical, Inc., a California corporation, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

INSOUND MEDICAL, INC.,  
a Delaware corporation

By: Adnan Shennib  
Adnan Shennib  
President and Chief Executive Officer

ATTEST:

Thar Hassoon  
Thar Hassoon  
Secretary

INSONUS MEDICAL, INC.,  
a California corporation

By: Adnan Shennib  
Adnan Shennib  
President and Chief Executive Officer

ATTEST:

Thar Hassoon  
Thar Hassoon  
Secretary

[COUNTERPART SIGNATURE PAGE  
TO AGREEMENT AND PLAN OF MERGER]

**OFFICERS' CERTIFICATE  
OF  
INSONUS MEDICAL, INC.,  
a California corporation**

As to InSonus Medical, Inc., a California corporation ("InSonus"), the designation and the number of shares outstanding and entitled to vote on the Merger are as follows:

Designation of Each Class of Shares	Total Number of Outstanding Shares Entitled to Vote on the Merger
Common Stock	3,592,944
Series A Preferred Stock	400,840
Series B Preferred Stock	2,499,336
Series C Preferred Stock	2,187,500

The principal terms of the of the Agreement in the form attached were approved by a vote of a number of shares of each class of InSonus' shares which exceeded the vote required: The vote required was a majority of each class of shares listed above, voting separately by class and in accordance with the Amended and Restated Articles of Incorporation for InSonus, a majority of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a separate class. Those signing this Officers' Certificate further declare and acknowledge, under penalty of perjury under the laws of the State of California, that the Agreement is the act and deed of InSonus and the facts stated in this certificate are true and correct of our own knowledge.

Signed as of January 8, 2002 in Newark, California.

INSONUS MEDICAL, INC.,  
a California Corporation

By: Adnan Shennib  
Adnan Shennib,  
President and Chief Executive Officer

By: Thar Hassoon  
Thar Hassoon,  
Chief Financial Officer and Secretary

**OFFICERS' CERTIFICATE  
OF  
INSOUND MEDICAL, INC.  
a Delaware corporation**

As to InSound Medical, Inc., a Delaware corporation ("InSound"), the designation and the number of shares outstanding and entitled to vote on the Merger are as follows:

Designation of Each Class of Shares	Total Number of Outstanding Shares Entitled to Vote on the Merger
Common Stock	100

The principal terms of the of the Agreement in the form attached were approved by a vote of the holder of all of the shares of InSound's Common Stock which exceeded the vote required. The vote required was a majority of InSound's Common Stock. Those signing this Officers' Certificate on behalf of InSound further declare and acknowledge, under penalty of perjury, that the Agreement is the act and deed of InSound and the facts stated therein are true.

Signed on January 11, 2002 in Newark, California.

INSOUND MEDICAL, INC.,  
a Delaware corporation

By: Adnan Shennib  
Adnan Shennib,  
President and Chief Executive Officer

By: Thar Hassoon  
Thar Hassoon,  
Chief Financial Officer and Secretary

